

DEPARTMENT OF STATE REVENUE

Revenue Ruling ST 98-01

February 26, 1998

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Purchase of Dry Ice

Authority: IC 6-2.5-5-9, Rule 45 IAC 2.2-5-16

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of dry ice placed in Styrofoam shipping containers.

STATEMENT OF FACTS

The taxpayer grows and processes ducks to sell to resellers or to institutions. The ducks processed typically weigh five (5) pounds and are wrapped in protective material and are shipped frozen with six (6) birds to a cardboard carton with many cardboard cartons on a pallet. Shipments to grocery chains and institutions are in refrigerated trucks.

Shipments of less than a full cardboard carton of ducks to restaurants or individuals are made by placing the wrapped ducks in Styrofoam shipping containers and surrounding the ducks with dry ice. The Styrofoam shipping containers are shipped UPS or airfreight. The taxpayer has been paying sales/use tax on the purchase of the dry ice placed in the Styrofoam shipping containers.

DISCUSSION

IC 6-2.5-5-9(d) provides that the purchase of wrapping material and empty containers is exempt from sales/use tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that he adds. Rule 45 IAC 2.2-5-16, interpreting IC 6-2.5-5-9, provides that the purchase of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added is exempt from sales/use tax. In the instant case, the purchase of cardboard cartons and styrofoam shipping containers falls within the ambit of IC 6-2.5-5-9(d) and Rule 45 IAC 2.2-5-16 as they are used as enclosures/containers/packages for the ducks, hence, is not subject to sales/use tax. The purchase of dry ice, however, does not fall within the ambit of IC 6-2.5-5-9(d) and Rule 45 IAC 2.2-5-16 as the dry ice is placed inside the styrofoam shipping containers to ensure safe shipment of the ducks and is not used as enclosures/containers/packages for the ducks, therefore, is subject to sales/use tax.

RULING

The Department rules that the purchase of dry ice that is placed in styrofoam shipping containers is subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.